

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WANDA S. MILLER, :
 :
Plaintiff, : Case No. 3:11cv133
 :
vs. : JUDGE WALTER HERBERT RICE
 :
COMMISSIONER OF SOCIAL SECURITY, :
 :
Defendant. :

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #16) IN THEIR ENTIRETY; DEFENDANT'S OBJECTION TO SAID JUDICIAL FILING (DOC. #17) OVERRULED; JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT COMMISSIONER, GRANTING DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT WITH REMAND UNDER SENTENCE FOUR 42 U.S.C. § 405(g) (DOC. #11), REVERSING THE ADMINISTRATIVE LAW JUDGE'S DECISION THAT PLAINTIFF WAS NOT DISABLED AND, THEREFORE, NOT ENTITLED TO BENEFITS UNDER THE SOCIAL SECURITY ACT, AND REMANDING THE CAPTIONED CAUSE TO THE DEFENDANT COMMISSIONER, PURSUANT TO SENTENCE FOUR OF 42 U.S.C. § 405(g), FOR FURTHER PROCEEDINGS CONSISTENT WITH THE REPORT AND RECOMMENDATIONS AND THIS COURT'S DECISION HEREIN; TERMINATION ENTRY

The captioned cause was filed on April 22, 2011, seeking review of a decision by the Defendant Commissioner that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act. In response to the Plaintiff's Statement of Specific Errors (Doc. #8), the Defendant Commissioner filed a Motion to Remand (Doc. #11) to "further evaluate the weight given to the opinions of the claimant's treating physicians, as well as any assessments provided by consultive examiners," and to

“reconsider the claimant’s residual functional capacity.” The Plaintiff filed a Memorandum (Doc. #14), objecting to the limited scope of the remand sought by the Defendant Commissioner. Plaintiff contended therein that not only did the Administrative Law Judge improperly weigh the opinions of her treating medical sources, but also that the hearing officer erred by failing to apply the doctrine of *res judicata* in his determination of disability. This argument is premised on her receipt of supplemental security income (“SSI”) benefits from September 2003 until October 2004, based upon an application that she filed prior to the application in this case. Such SSI benefits were awarded upon an initial determination, made at the administrative level, that she was disabled. These benefits were terminated approximately thirteen months later when she became incarcerated.

On January 25, 2012, the United States Magistrate Judge filed a Report and Recommendations (Doc. #16), recommending that the Defendant Commissioner’s Motion for Entry of Judgment with Remand under Sentence Four of 42 U.S.C. § 405(g) be granted, albeit not in the limited fashion sought by the Commissioner. He further recommended that the Administrative Law Judge’s decision be reversed and that the matter be remanded to the Defendant Commissioner, pursuant to Sentence Four of 42 U.S.C. § 405(g), for further proceedings consistent with his Report and Recommendations.

Based upon reasoning and citations of authority set forth in the Magistrate Judge’s Report and Recommendations (Doc. #16), as well as upon a thorough de novo review of this Court’s file, including the Administrative transcript (Doc. #6), and a thorough review of the applicable law, this Court adopts the aforesaid Report and Recommendations in their entirety and, in so doing, orders the entry of judgment in favor of the Plaintiff and against

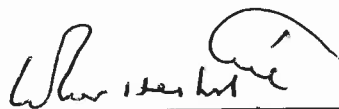
Defendant Commissioner, granting the Defendant Commissioner's Motion for Entry of Judgment with Remand under Sentence Four of 42 U.S.C. § 405(g), albeit not in the limited form requested by Defendant Commissioner, reversing/vacating the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, and remanding the captioned cause to the Defendant Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendations. The Defendant's Objection to said judicial filing (Doc. #17), to the extent he seeks a more limited remand, is overruled.

WHEREFORE, based upon the aforesaid, this Court adopts the Report and Recommendations of the United States Magistrate Judge (Doc. #16) in their entirety, having concluded that the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act was not supported by substantial evidence. Judgment will be ordered entered in favor of Plaintiff and against Defendant Commissioner, reversing/vacating the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, granting the Defendant Commissioner's Motion for Entry of Judgment with Remand under Sentence Four of 42 U.S.C. § 405(g), and remanding the captioned cause to the Defendant Commissioner, pursuant to Sentence Four of 42 U.S.C. § 405(g), for further proceedings consistent with both the Report and Recommendations and this opinion, to wit:

1. Determine whether administrative *res judicata* applies to the prior administrative determination that Plaintiff was disabled;
2. Determine whether the Commissioner has met his burden to show medical improvement as set forth in Drummond v. Commissioner of Social Security, 126 F.3d 837 (6th Cir. 1997);
3. If benefits are not awarded based upon the prior administrative determination of disability, review Plaintiff's disability claim under the required five-step sequential analysis to determine anew whether Plaintiff was under a disability and thus eligible to receive SSI;
4. Reevaluate the weight given to the opinions of Plaintiff's treating physicians, as well as any assessments provided by consultative examiners; and
5. Reconsider the claimant's residual functional capacity.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 28, 2012



WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record